

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms)	CC Docket No. 98-171
)	
)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990)	CC Docket No. 90-571
)	
)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size)	CC Docket No. 92-237 NSD File No. L-00-72
)	
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 99-200
)	
Truth-in-Billing and Billing Format)	CC Docket No. 95-116
)	
American Public Communications Counsel Petition for Reconsideration)	CC Docket No. 98-170
)	

**PETITION FOR CLARIFICATION OR, IN THE ALTERNATIVE
RECONSIDERATION**

Pursuant to 47 C.F.R. § 1.429(a), the Central Atlantic Pennsylvania Payphone

Association ("CAPA") seeks clarification or, in the alternative reconsideration,¹ of the Commission's February 14, 2008 Order on Reconsideration which granted the Petition

¹ CAPA is not seeking a modification of the Order, but rather a clarification. To the extent the Commission's rules only permit the filing of a Petition for Reconsideration, CAPA respectfully requests that this filing be considered in compliance.

for Reconsideration of the American Public Communications Counsel ("APCC").² In this Order, the Commission concluded that a previously granted interim waiver of 47 C.F.R. § 54.712 which allowed local exchange carriers ("LECs") to recover certain contribution costs associated with Centrex customers from multi-line business customers was not applicable to independent payphone providers ("PSPs"). Even though the LECs have assessed this charge on PSPs since April 1, 2003, the Commission's Order was silent regarding refunds of these improperly assessed charges. By clarifying the Order to direct refunds of these overcharges since April 1, 2003, the Commission would be supporting the goal of 47 U.S.C. § 276(b) to "promote the widespread deployment of payphone services to the general public" and its subsequent orders regarding PSPs.

I. STATEMENT OF INTEREST

CAPA is an industry trade organization whose members are comprised of independent payphone providers which own and operate payphones in the Commonwealth of Pennsylvania. CAPA members are dedicated to improving the quality of payphones available, and to encouraging the economic growth of the Commonwealth.

II. BACKGROUND

Congress has declared its goal of promoting "competition among payphone service providers" and promoting "the widespread deployment of payphones for the benefit of the general public."³ In furtherance of this goal, the Commission terminated the prior system of payphone regulation and eliminated discrimination between Bell operated companies ("BOCs") and independent payphone providers and subsidies of

² *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96045, Order on Reconsideration released February 14, 2008.

³ 47 U.S.C. § 276(b)(1).

BOC payphones.⁴ The Commission also established a "new services test" to set payphone line rates and concluded that the payphone line rates cannot include subsidies for other BOC services.⁵ Further, in the Commission's on-going efforts to address universal service issues, it adopted 47 C.F.R. § 54.712 in 2002 which prohibits carriers from assessing customers charges in excess of the carrier's universal service fund contribution factor.⁶

Section 54.712 became effective April 1, 2003. Prior to its effective date, however, the Commission granted petitions for interim waiver and reconsideration which had the effect of permitting LECs to recover contribution costs associated with Centrex customers on a per-line basis from multi-line business customers ("*Centrex Waiver Order*").⁷ On April 1, 2003, BOCs began assessing PSPs universal service line item rates which included recovery for the costs of providing universal service discounts to Centrex customers. Subsequently, on April 30, 2003, APCC filed a Petition for Reconsideration of the interim waiver advocating that application of the interim waiver to PSPs was inconsistent with the Act and the Commission's policies regarding PSPs. On February 14, 2008, the Commission granted APCC's Petition for Reconsideration and determined that 47 C.F.R. § 54.712 applies to PSPs and BOCs cannot recover the cost of discounts to Centrex customers through additional universal service charge assessments on PSPs. The

⁴ *Wisconsin Public Service Commission Order Directing Filings*, Memorandum Opinion and Order, Bureau/CPD No. 00-01, 17 FCC Rcd 2051 (2002) (*Wisconsin Payphone Order*).

⁵ *Id.* at ¶ 2.

⁶ *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements*, CC Docket No. 66-45, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*Interim Contribution Methodology Order*).

⁷ *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Second Order on Reconsideration, 18 FCC Rcd 4818, ¶¶ 3-9 (2003) (*Centrex Waiver Order*).

Commission's Order, however, was silent on the issue of refunds for the charges that have been assessed on PSPs since April 1, 2003.

III. DISCUSSION

In its Order, the Commission correctly determines that application of the interim waiver of 47 C.F.R. 54.712 to PSPs results in charges associated with payphone lines that are not cost-based.⁸ Since imposition of such charges is not consistent with the Act or the Commission's prior actions, BOCs are not permitted to assess the charges. Consequently, all of the charges assessed by the BOCs since April 1, 2003 were improper and PSPs are entitled to be refunded these charges. The PSPs have timely preserved their right to recovery pursuant to 47 U.S.C. § 215 because they sought relief from the Commission in the APCC Petition for Reconsideration which was filed within 30 days of being assessed the charge. Since the Commission's Order is silent on the issue of refunds, CAPA respectfully requests that the Commission clarify its Order and direct that all the charges paid by PSPs since April 1, 2003 in reliance on the *Centrex Waiver Order* be refunded.

The Commission has been very clear in its decisions that charges assessed to PSPs must be cost-based. Subsequent to the filing of the APCC Petition for Reconsideration of the interim waiver, the Commission issued an order ("*PICC Order*") concluding that "it is bad policy to impose a non-cost-based charge. . . on payphone lines because doing so may limit the deployment of payphone services that serve these important functions."⁹ Consequently, the Commission directed LECs to remove the PICC charge from payphone lines.

⁸ Order at ¶ 8.

⁹ *In the matter of Access Charge Reform*, CC Docket No. 96-262, Order on Reconsideration, 18 FCC Rcd 12626, ¶ 8 (2003) (*PICC Order*).

The federal universal service line charges assessed on CAPA members pursuant to the interim waiver of 47 C.F.R. 54.712 since April 1, 2003 are not cost-based. Rather, they permit carriers who provide discounts to Centrex customers to use the charges to recover the cost of the discount. As the APCC detailed in its Petition for Reconsideration, Verizon began charging CAPA members \$.95 for universal service effective April 1, 2003 even though the charge should have been \$.58 per line per month.¹⁰ In the five years since, CAPA estimates that its members have paid Verizon approximately \$500,000 for these improper charges.

The issue of refunds "boils down to a question of concerns grounded in notions of equity and fairness."¹¹ Making clear that the Order requires refunds is fair and equitable for several reasons. First, CAPA members have been forced to pay these improper charges over the past five years which has impacted their ability to concentrate resources toward achieving the Act and the Commission's goal of promoting the widespread deployment of payphone services. During this time and based on a variety of factors, including competitive pressures, the payphone industry has also been experiencing difficult times. Business is consistently declining and margins are slim. Literally every dollar of revenue and every customer is signification. The industry has had no ability to absorb these overpayments which the Commission has determined are invalid. By failing to be clear in its Order that BOCs are required to refund the payments made by PSPs during the five years this proceeding has been pending, the Commission is inserting uncertainty into an issue which should be a given, and the BOCs will undoubtedly

¹⁰ APCC Petition for Reconsideration, at 4-5.

¹¹ *Communications Vending Corporation of Arizona, Inc. v. Citizens Communications Company*, File Nos. EB-02-MD-018-030, Memorandum Opinion and Order at ¶ 33 (rel. November 19, 2002) quoting *Verizon v. FCC*, 269 F. 3d 1101 at 1109-10 (D.C. Cir. 2001).

attempt to leverage that uncertainty to contest an aggressive legal challenge to refund. The Commission should address this situation now by clarifying that refunds are required in a timely manner.

Second, the PSP industry has acted with due diligence in attempting to prevent the overcharges in the first instance. Immediately upon realizing that the rule changes effective April 1, 2003 were going to be interpreted to assess additional universal service charges on PSPs, APCC sought quick action from the Commission specifically to prevent being forced to make unnecessary payments for an improper charge. Unfortunately, this is exactly what has happened even though the Commission has been clear in other proceedings during this time period that PSPs can only be charged cost-based rates. In fact, just two months after APCC filed its Petition for Reconsideration, the Commission made clear in its *PICC Order* that PSPs could only be charged cost-based rates. Pronouncements from the FCC such as this should have made clear to the BOCs that the Commission's policy regarding cost-based PSP rates would not support continuation of the interim waiver with respect to PSPs. The fact that the BOCs unilaterally choose to continue to assess the charges and PSPs had no choice but to pay until the Commission's recent actions has already created an injustice to CAPA members that the Commission can remedy by clarifying its Order.

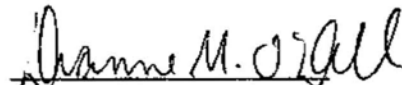
Without clear direction from the Commission that refunds are required, the BOCs will reap the financial benefits of the PSP overpayments made over the past five years and the Commission will be rewarding the BOCs for choosing to assess charges that were undeniably not cost based. Such a result is unjust and must be clarified. With this

clarification, the Commission will be returning the parties to the status quo to fulfill Congress' intention regarding payphone service providers.

IV. CONCLUSION

For the forgoing reasons, CAPA requests that the Commission clarify its February 14, 2008 Order in this proceeding and direct that refunds be issued to PSP providers that have been assessed charges since April 1, 2003 in accordance with the Commission's interim waiver order.

Respectfully submitted,



Alan Kohler, Esquire

Deanne M. O'Dell, Esquire

WolfBlock, LLC

213 Market Street, 9th Fl

Harrisburg, PA 17108

(717) 237-7160

Attorneys for the Central Atlantic Payphone
Association

Dated: March 14, 2008

HAR:79152.1/CEN043-098601